IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 539 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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WASIM AKRAM MUSTAFABHAI SHEIKH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/09/2006

ORAL JUDGMENT

1. By way of this petition, petitioner prays to quash and set aside the order dated 18.03.2005 passed under the provisions of the Bombay Police Act, 1951 by Assistant Commissioner of Police, Ahmedabad City, Ahmedabad Rural, externing the petitioner from Ahmedabad City, Ahmedabad Rural, Kheda, Mehsana and Gandhinagar for a period of two years as well as order dated 24.05.2005 passed by State of Gujarat confirming the aforesaid order.

2. Learned Advocate for the petitioner has invited my attention to the show-cause notice dated 08.04.2004 issued by respondent No.2. In the said show-cause notice, three offences have been shown as registered against the petitioner. First offence is registered with the Kalupur police Station, Ahmedabad being C.R. No.122 of 2002 punishable under Section 379, 114 of I.P.C.

2.1 Second offence is registered with the Kalupur Police Station, Ahmedabad being C.R. No.132 of 2002 punishable under Section 379, 114 of I.P.C.

2.2 Third offence is registered with the Kalupur Police Station, Ahmedabad being C.R. No.137 of 2002 punishable under Section 379, 114 of I.P.C.

2.3. Fourth offence is registered with the Kalupur Police Station, Ahmedabad being C.R. No.141 of 2002 punishable under Section 379, 114 of I.P.C.

2.4. Fifth offence is registered with the Shahibag Police Station, Ahmedabad being C.R. No.7 of 2003

punishable under Section 110(g) of Cr.P.C. Pursuant to the issuance of aforesaid show-cause notice, the petitioner was called for hearing on 16.04.2004. The petitioner, thereafter, filed a detailed reply to the aforesaid notice. Pursuant to that order dated 24.05.2005 was passed by the respondent No.2 externing the petitioner from the aforesaid areas for a period of two years which was later on confirmed by respondent No.1 vide order dated 18.03.2005.

3. Learned Advocate for the petitioner has raised following contentions,

1. Though, no offence has been registered against the petitioner in Ahmedabad City, Ahmedabad Rural, Kheda, Mehsana and Gandhinagar, he has been externed from those areas for a period of two years, which shows total non-application of mind on the part of respondents.

2. While passing the order of externment, the respondents have taken into consideration

the offences which were not mentioned in the show-cause notice dated 08.04.2004, and hence, the respondents have traveled beyond the scope of the show-cause notice.

3. While passing the impugned orders, the respondents have not taken into consideration the fact that the petitioner had not been tried or punished in connection with any offence by any Court. Hence, there is breach of principles of natural justice.

4. There is delay of about eleven months between the issuance of show-cause notice dated 08.04.2004 and the order of externment i.e. 18.03.2005 which is not explained by the respondents.

5. The impugned orders are passed by the respondents with a view to see that the petitioner cannot pursue the criminal cases filed by him against the officers of the respondents.

4. In support of his case, learned Advocate for the petitioner has placed reliance on certain judgments of the Apex Court and this Court. In the case of Rambhai alias Ramlo Khimchand v. State of Gujarat and Anr. reported in 1990 (2) GLH 625, this Court held that the order of externment was vitiated as the essential circumstances on which externing authority relied in the externment order was not stated in the notice.

4.1 In the case of Dafer Rahman Zarar v. State of Gujarat & Ors reported in 1999 (1) GLH 425, this Court quashed the order of externment on the ground of the notice being vague as the period and area of operation of alleged activity and the offences shown in the order were not mentioned in the notice thereby rendering the order of externment violative of principles of natural justice.

4.2 In the case of Laxmanbhai Becharbhai Kehar v. Dy. Commissioner of Police, Vadodara reported in 2002(4) GLR 3114, the petitioner was found involved

in three different cases, two of them being offences punishable under Bombay Prohibition Act and one a petty non-cognizable case falling under Chapter 16 of I.P.C. This Court has held that failure in exercising jurisdiction properly in light of the facts available on record, makes the order bad as it is required to be established that the allegations reflected in the notice to show cause is sustainable on available set of facts and thereby quashed the order of externment.

4.3 In the case of Jagdish Shamjibhai Makwana v. Sub-Divisional Magistrate, Bhavnagar & Anr reported in 2002 (2) GLR 1158, the petitioner was removed from Bhavnagar and adjoining districts but no reason was given by the concerned authority as to why the petitioner was required to be removed from adjoining districts. This court quashed the order of externment as proper facts were not mentioned in the notice and the copies were not supplied thereby not giving opportunity of effective reply.

4.4 In the case of Kalubhai Becharbhai Gohil v.

State of Gujarat & Ors. Reported in 2003 (2) GLR 1612 this Court quashed the order of externment on the ground of notice being vague as there were no particulars even about the approximate month of such incidents given in the show-cause notice and therefore the petitioner was denied opportunity of effective reply.

4.5 Similar principle has been followed in the case of Purushottambhai Budhabhai Raval v. State of Gujarat & Ors. Reported in 2003 (4) GLR 2919 wherein the notice was quashed by this Court on the ground of the same being vague.

4.6 In the case of Nawabkhan Abbaskhan v. State of Gujarat reported in AIR 1974 SC 1471, the Apex Court in view of the fact that opportunity to tender explanation under Section 59 not given to the petitioner held that a fundamental right of the accused under Article 19 had been encroached upon by the Police Commissioner without due hearing and thereby the Apex Court acquitted the accused.

5. Learned A.P.P. has placed reliance on the further affidavit-in-reply filed by the respondent No.2 and has supported the orders of the Authorities.

6. Heard learned Advocates for the respective parties. On perusal of the order of externment and looking to the reasonings assigned by the competent authority, I am of the view that there is sufficient justification for externing the applicant. The facts of the aforesaid cases cited by the learned advocate for the applicant do not apply in the present case as the notices issued are in accordance with law.

7. At the same time it was also true that looking to the nature of offences a liberal view should have been taken by the competent authority. I am therefore of the view that externment of two years is harsh looking to the offence alleged against the applicant. On the overall facts and circumstances of the case, I am of the opinion that the externment order imposing a penalty of one year would have been just and proper.

8. In view of the above, the application is partly allowed. The externment period of two years imposed by the authority is reduced to one year. The impugned order is modified accordingly. However, it is made clear that if the applicant indulges in the same offence again, it will be open to the authority to pass appropriate orders considering his past background and in such event this order shall not be treated as precedent even for the applicant for future conduct. Rule is made absolute to the aforesaid extent.

(K.S. JHAVERI, J.)

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